IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

W.P.No.13829 of 2003 and W.P.No. 17310 of 2003

Saveetha Medical & Educational Trust
rep. by the President
Saveetha Medical & Educational Trust
Post Bag No.6, No.162
Poonamallee High Road
Velappan Chavadi
Chennai - 600 077. .. Petitioner
in both WPs.
-Vs-

1. The Union of India
rep. by the Secretary to Government
Government of India
Ministry of Health & Family Welfare
Department of Health
PMS Section, Nirman Bhavan
New Delhi-110 011.

2. Dental Council of India
rep. by the Secretary
Aiwan-E-Galib Marg
Kotla Road, New Delhi-110 002. .. Respondents
1 & 2 in both
W.P.s
3. Dr.MGR Medical University
rep. by the Registrar
Guindy, Chennai. .. Respondent
(impleaded by order No.3 in W.P.
dated 15.3.2004 in No.17310/2003
W.P.M.P.No.43721/2003)

PRAYER: Petitions under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.G.Masilamani
Senior counsel
for Mr.M.Jothi Basu

^For Respondents : Mr.S.Krishnasamy,S.G.S.C.

for 1st respondent
Mr.Perumbulavil Radhakrishnan
for 2nd respondent
Mr.M.Vellaichamy
for 3rd respondent

:ORDER

Both these writ petitions are filed by the same petitioner, viz., Saveetha Medical and Educational Trust, Chennai.

2.1. Background factual matrix involved is undisputed and is essentially as follows:
The petitioner/College applied to the first respondent/Government seeking permission to start Master of Dental Surgery (for brevity "M.D.S.")

course in Oral Pathology, with an annual intake of five students from the academic year 2001-2002, under the provisions of the Dentists Act, 1948 (for brevity "the Act").

2.2. The first respondent/Government forwarded the application of the petitioner to the second respondent/ Dental Council of India, a statutory authority constituted under the Act, for their evaluation and recommendations for granting permission to the petitioner/College for starting the said course, as contemplated under Section 10-A of the Act. Accordingly, the second respondent/Dental Council of India appointed Inspectors to ascertain the infrastructure and other facilities available at the petitioner/College and the Inspectors inspected the petitioners/ College on 18.4.2001.

2.4. Pursuant to the inspection conducted on 18.4.2001, the Executive Committee of the second respondent/Dental Council of India met on 6 th and 7th May, 2001, considered the inspection report submitted by the Inspectors and the decision taken by the Executive Committee was communicated to the petitioner/College vide their letter dated 25.5.2 0 01, relevant portion of which reads as under:

"That the joint inspection report is noted.
The Executive Committee does not recommend to the Central Government to grant its permission for starting the MDS Course in the speciality of Oral Pathology at Saveetha Dental College, Chennai due to the following deficiencies:

1.The college authorities have not furnished the certificate towards the teaching experience gained by Dr.T.Chandrashekhar at Sri Balaji Dental College.

2.The college authorities have not furnished the documentary proof about teaching staff of the basic medical subjects as to whether they have gained teaching experience at Medical College, Udaipur as teachers or non-teaching, viz., clinical.

3.The college authority has not furnished the relieving order of the teaching

staff from the previous institution.

4.The Saveetha Dental College, Chennai has misled the Council and has furnished false information about the teaching experience of the teaching staff at V.M.S.Dental College, Salem and Oxford Dental College, Bangalore but as per the Council's record the following teaching staff was never associated/worked at the said colleges, during the period as mentioned against each. The following member of teaching staff is not eligible for the post of Professor:

S.No.
Name/
Designation
Department
Period
1
Dr.Shankara Narayanan, Professor
Oral Pathology
1990 to April 1997 at V.M.S.Dental College, Salem.
May 1997 to 2000 at Oxford Dental College, Bangalore."

2.5. On receipt of the said proceedings dated 25.5.2001 of the second respondent/Dental Council of India, the petitioner/College submitted its detailed explanation on 30.6.2001 complying the deficiencies pointed out by the Inspectors during the inspection conducted on 18.4 .2 001.

2.6. In the meanwhile, the second respondent/Dental Council of India, by their letter dated 19.7.2001, recommended the first respondent/ Government to grant permission to the petitioner/College to start M. D.S. (Oral Pathology) Course with three seats, of course after obtaining the performance bank guarantee of Rs.60 Lakhs from the petitioner/ College.

2.7. In continuation to the explanation dated 30.6.2001, the petitioner/College, in their further representation dated 30.7.2001 furnished the details of the eligibility of Dr.S.Sankara Narayanan qualifying himself as a Professor in Oral Pathology, in order to substantiate that the deficiency alleged for granting permission to the petitioner/College to start M.D.S. (Orl Pathology) course, with reference to the eligibility of Dr.S.Sankara Narayanan to the post of Professor of Oral Pathology, is unsustainable in law.

2.8. The first respondent/Government, by communication dated 6.8.200

1, based on the recommendations of the second respondent/Dental Council of India dated 19.7.2001, issued a letter of intent to the petitioner/College for starting M.D.S. (Oral Pathology) Course with an intake of three students, however, subject to the fulfillment of the following conditions:
"(i) The teaching and non-teaching staff shall be recruited as per DCI norms.

(ii) The applicant has a feasible and time bound programme to provide additional equipments and infrastructure facilities as per DCI norms.

(iii) The applicant will furnish the Performance Bank Guarantee of Rs.60.00 Lakhs in favour of DCI valid for at least one year.

(iv) Admission in M.D.S.(Oral Pathology) course will be made only after receipt of formal permission from the Government of India. Any contravention of this condition will attract the provisions of Section 10B of the Dentists (Amendment) Act, 1993."

2.9. After receipt of the proceedings dated 6.8.2001 of the first respondent/Government, the petitioner/College made a further representation on 7.9.2001 furnishing the particulars of qualifications and teaching experience of Dr.T.Chandrasekar, Dr.S.Sankara Narayanan and Dr.P.C.Anila in Oral Pathology.

2.10. Without appreciating the request of the petitioner/College, the first respondent/Government, by its letter dated 17.9.2001, refused to grant permission for five seats in M.D.S.(Oral Pathology) Course, as the same would be against the recommendations of the second respondent/Dental Council of India.

2.11. The petitioner/College, thereafter, submitted a further representation on 25.9.2001 expressing their regret for not granting permission to start M.D.S.(Oral Pathology) Course with an intake of five students.

2.12. Besides, the petitioner/College, by representation dated 24.10

.2001, submitted the further details regarding qualification and experience of Dr.S.Sankara Narayanan, as the particulars regarding Dr.T. Chandrasekar were already accepted by the first respondent/ Government while granting permission to start M.D.S. (Oral Pathology) Course with three seats.

2.13. It is under such circumstances, concededly, the first respondent/Government, by their letter dated 27.12.2001, withdrew their letter of intent dated 6.8.2001 and remitted the matter to the second respondent/dental Council of India to reconsider the proposal of the petitioner/College for starting M.D.S.(Oral Pathology) Course with five students.

2.14. However, the second respondent/Dental Council of India, in their letter dated 12.2.2002 again recommended to grant permission to the petitioner/College to start M.D.S. (Oral Pathology) Course only with three seats instead of five seats. The relevant portion of the communication dated 12.2.2002 reads as under:

"The application of the said college for starting MDS course in the speciality of Oral Pathology was for 5 seats and inspection of the said college was conducted by the Council's Inspectors for 5 seats. Since Dr.Shankara Narayanan shown as Professor was not eligible for the post of Professor

because he was never associated/worked at V.M.S. Dental College, Salem during the period 1990 to April, 1997 and May 1 997 to 2000 at Oxford Dental College, 3 seats for starting MDS Course in the speciality of Oral Pathology at Saveetha Dental College, Chennai were recommended on the basis of eligible/qualified teaching staff available at the time of inspection."

2.15. Based on the above recommendations of the second respondent dated 12.2.2002, the first respondent by their letter dated 18.3.2002

decided to issue a letter of intent for starting M.D.S.(Oral Pathology) Course again for three seats.

2.16. Undoubtedly, as on 18.3.2002, when the first respondent/ Government reaffirmed the permission to the petitioner/College for starting M.D.S.(Oral Pathology) Course again with three seats, all the materials relating to the qualification and experience of Dr.S. Sankara Narayanan, as to his eligibility for the post of Professor for Oral Pathology, were available on record before the second respondent as well as the first respondent.

2.17. As the eligibility of Dr.S.Sankara Narayanan to the post of Professor in Oral Pathology was refused by the second respondent/ Dental Council of India, he moved this Court in W.P.No.46700 of 2002 seeking a direction to the second respondent/Dental Council of India to dispose of his representation sent through the petitioner/College claiming that he is eligible to be a Professor in Oral Pathology, and this Court, by order dated 31.12.2002, directed the second respondent to consider the representation of Dr.S.Sankara Narayanan and pass appropriate orders within ninety days thereon.

2.18. Pursuant to the said directions of this Court dated 31.12.2002

in W.P.No.46700 of 2002, the Executive Committee of the second respondent/Dental Council of India, in its meeting held on 5.4.2003, verified the records relating to the qualification and teaching experience of Dr.S.Sankara Narayanan and came to the conclusion that Dr.S. Sankara Narayanan satisfies the norms required for the post of Professor in Oral Pathology. The said decision was communicated to Dr.S. Sankara Narayanan by the proceedings of the second respondent/Dental Council of India dated 8.4.2003, with an observation that the petitioner/ College would would not be entitled to claim the benefit of the decision that Dr.S.Sankara Narayanan is eligible to the post of Professor in Oral Pathology, for starting M.D.S.(Oral Pathology) Course with an intake of 5 students, for which the petitioner/College should submit a separate scheme for increasing the seats invoking Section 10-A of the Act.

2.19. Aggrieved by the said proceedings dated 8.4.2003, the petitioner preferred W.P.No.13829 of 2003.

2.20. Simultaneously, the petitioner also made a representation to the first respondent/Government on 12.4.2003, requesting the first and second respondents to modify the letter of intent and to permit the

petitioner/College to start M.D.S.(Oral Pathology) Course with an intake of five students from 1.6.2003 onwards, of course, placing reliance on the proceedings of the second respondent/Dental Council of India dated 8.4.2003.

2.21. As no orders were passed on the representation dated 12.4.2003

, this Court by an order dated 30.4.2003 in W.P.M.P.No.17308 of 2003 in W.P.No.13829 of 2003 directed the second respondent/Dental Council of India to consider the representation of the petitioner dated 12.4 .2003 and pass appropriate orders within five weeks from the date the order.

2.22. The second respondent/Dental Council of India, therefore, by proceedings dated 4.6.2003, observing that the petitioner had failed to furnish the relevant records relating to the qualification and experience of Dr.S.Sankara Narayanan at the time of original inspection, refused to grant permission to start M.D.S. (Oral Pathology) Course with an intake of five students even with effect from 1.6.2003 and required the petitioner/College to make a fresh application/scheme under Section 10-A of the Act.

2.23. Based on the above proceedings of the second respondent/ Dental Council of India dated 4.6.2003, the first respondent, by proceedings dated 25.6.2003, rejected the request of the petitioner/ College to start M.D.S. (Oral Pathology) Course with an intake of five students with effect from 1.6.2003, advising them to apply afresh for increase of intake capacity from three to five seats, as per Section 10-A of the Act.

2.23. Aggrieved by the proceedings of the second respondent dated 4.6.2003, the petitioner had preferred W.P.No.17310 of 2003.

3. Mr.G.Masilamani, learned senior counsel for the petitioner/ College assails the impugned proceedings passed by the first and second respondents, referred to above, as under:
i.pointing out that the only reason for refusal of permission to the petitioner/College to start M.D.S. (Oral Pathology) Course with an intake of five students was that Dr.S.Sankara Narayanan was not eligible for the post of Professor in Oral Pathology, it is contended that the respondents overlooked the materials available on record as on 12 .2.2002 with respect to the qualification and experience of Dr.S. Sankara Narayanan, when the first respondent/Government by order dated 27.12.2001 withdrew their letter of intent dated 6.8.2001 and remitted the matter to the second respondent/Dental Council of India to reconsider the proposal of the petitioner/College for starting M.D.S.(Oral Pathology) Course with five students instead of three students. Hence, the proceedings of the second respondent/Dental Council of India dated 12.2.2002 suffers from non application of mind, as Dr.S. Sankara Narayanan was eligible to the post of Professor of Oral Pathology;
ii.when this Court by order dated 31.12.2002 in W.P.No.46700 of 2002 filed by Dr.S.Sankara Narayanan directed the second respondent/ Dental Council of India to consider the representation of Dr.Sankara Narayanan sent through the petitioner/ College with respect to his eligibility to the post of Professor in Oral Pathology, and the second respondent in their proceedings dated 8.4.2003 have satisfied themselves that he is eligible for the post of

Professor in Oral Pathology based on the records produced before the second respondent, it is contended that the second respondent/Dental Council of India ought to have granted permission to the petitioner/College at least to start the course from 1.6.2003 prospectively, with an intake of five students. However, the decision of the second respondent/Dental Council of India that even though Dr.S.Sankara Narayanan was eligible to the post of Professor in Oral Pathology, the petitioner/College would not be entitled to claim any benefit to start M.D.S. (Oral Pathology) Course with an intake of five students is arbitrary and unreasonable; and
iii.since the respondents have satisfied themselves that Dr.S. Sankara Narayanan is fully qualified, has sufficient experience and is therefore, eligible for the post of Professor in Oral Pathology, there is no other reason for refusing permission to the petitioner/ College to start M.D.S. (Oral Pathology) Course, and hence, the direction of the second respondent/Dental Council of India requiring the petitioner/College to apply afresh under Section 10-A of the Act is mala fide, inasmuch as the respondents failed to exercise the power conferred under the Act and the regulations framed thereunder.

4.1. Per contra, Mr.Perumbulavil Radhakrishnan, learned counsel for the second respondent/Dental Council of India submits that as per Section 10-A (8) of the Act, the order passed by the second respondent refusing to grant permission to the petitioner/ College to start M.D. S. (Oral Pathology) Course with an intake five students had become final.

4.2. It is further argued that, if the petitioner wants to revive the original scheme for intake of five students or to seek additional intake of students, the same is permissible only by way of a fresh application/scheme, which requires a further inspection, scrutinization of the materials and a decision thereon. In this regard, the learned counsel for the second respondent/ Dental Council of India also invited my attention to the second proviso to Section 10A(4), whereunder it is provided that nothing shall prevent any person, authority or institution whose scheme has not been approved to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under subsection(2) to Section 10A of the Act.

4.3. Inter alia, it is also contended that the second respondent/ Dental Council of India was unable to grant permission to the petitioner/College to start M.D.S. (Oral Pathology) Course with five students as the particulars regarding qualification and experience of Dr.S. Sankara Narayanan were not furnished to the Inspectors, who inspected the petitioner/College pursuant to the original application; and that the petitioner/College having committed a default on its part is not entitled to find fault with the second respondent for not recommending for starting M.D.S. (Oral Pathology) course with five seats.

5. Mr.S.Krishnasamy, learned Senior Central Government Standing Counsel for the first respondent/Government submits that the first respondent/Government is only a formal party and they are bound by the recommendations of the second respondent/Dental Council of India.

6. Mr.M.Vellaichamy, learned counsel for the third respondent/ University submits that in the matter of granting permission to the scheme of the Act, the third respondent/ University has no direct role to play, except to follow the directions of the second respondent/ Dental Council of India.

7. I have given careful consideration to the facts and circumstances of the case and the submissions made by the counsel for the parties.

8. It is true that the first respondent/Government by their letter dated 6.8.2001 partially approved the scheme of the petitioner/ College permitting them to start M.D.S. (Oral Pathology) Course with an intake of three students. But, on further representation by the petitioner/College, the first respondent/Government themselves intervened and remitted the matter to the second respondent/Dental Council of India to reconsider the request of the petitioner/College to start M.D.S. (Oral Pathology) Course with an intake of five students, on which date, all the materials relating to the qualification and experience of Dr.S.Sankara Narayanan which are relevant to decide his eligibility to the post of Professor in Oral Pathology were available with the second respondent. But, the second respondent/Dental Council of India, without applying its mind, maintained their earlier view and again recommended that the petitioner/College is not eligible, which decision is contrary to the records available before this Court, more particularly, when on the directions of this Court dated 31.12.2002 made in W.P.No.46700 of 2002 filed by Dr.S.Sankara Narayanan, the second respondent satisfied themselves that Dr.S.Sankara Narayanan is eligible to the post of Professor in Oral Pathology.

9. That apart, as rightly pointed out by Mr.G.Masilamani, learned senior counsel for the petitioner/ College, the first respondent ought to have applied their mind independently, at least on the second occasion when the second respondent/Dental Council of India reiterated their recommendation for three seats instead of five seats, ignoring the material facts relating to the eligibility of Dr.S.Sankara Narayanan to the post of Professor in Oral Pathology, which was the only ground for refusing permission to the petitioner/College to start M. D.S.(Oral Pathology) course with an intake of five students.

10. Unable to appreciate the contention made on behalf of the Mr.S. Krishnasamy, the learned Senior Central Government Standing Counsel appearing for the first respondent/Government that the first respondent/Government is only a formal party, it could not be disputed that while the second respondent/Dental Council of India is only a recommending authority for granting permission for the courses covered under the Act, the first respondent/ Government is the decision making authority for the same as per Section 10A(4) of the Act. Therefore, it is apparent on the face of the records that the first respondent/ Government has failed to apply its mind as to the lapses committed by the second respondent/Dental Council of India for not taking the materials available on record while passing the proceedings dated 12.2.2002 reiterating their earlier stand.

11. In any event, the observation made by the second respondent that even after having satisfied that Dr.S.Sankara Narayanan is eligible to be

appointed as a Professor in Oral Pathology, the petitioner/ College would not be entitled to claim the benefit of the same is arbitrary, perverse, capricious and mala fide, violating Article 14 of the Constitution of India, particularly when the petitioner/College requested only prospective permission to start M.D.S. (Oral Pathology) Course with five students from 1.6.2003.

12. Even though second proviso to sub-section 4 to Section 10A of the Act enables the applicant to file a fresh scheme and there is no bar under the provisions of the Act or regulations for the same, in the instant case, there cannot be any doubt that the petitioner/ College need not apply afresh seeking permission, as the reason that weighed the authorities refusing permission to start M.D.S. (Oral Pathology) Course with an intake of five students is unsustainable in law, and when such reasons are no more valid in law, as the impugned proceedings are nothing but a continuation of the proceedings initiated pursuant to the first scheme/ application filed by the petitioner and therefore, this Court while exercising the power of judicial review is entitled to set right records without dragging the petitioner/ College to file a fresh scheme, as no other reason was cited by the respondents for refusing the permission except the one with regard to the eligibility of Dr.S.Sankara Narayanan, which was found to be satisfactory and accepted by the second respondent in their proceedings dated 8.4.20 03.

13. Under such circumstances, I am inclined to pass the following order:
(i) the decision of the Executive Committee of the second respondent/Dental Council of India taken on 5.4.2003, as communicated in the proceedings of the second respondent dated 8.4.2003 that the petitioner/College would not be entitled to claim the benefit of eligibility of Dr.S.Sankara Narayanan to the post of Professor in Oral Pathology for starting M.D.S. (Oral Pathology) Course with an intake of five students stands quashed;
(ii) the consequential proceedings of the second respondent/Dental Council of India dated 4.6.2003 and that of the first respondent/ Government dated 25.6.2003 requiring the petitioner/College to apply afresh for the increase of seats in M.D.S. (Oral Pathology) Course from 3 seats to five seats, stands quashed;
(iii) the respondents 1 and 2 are directed to pass appropriate orders on or before 30.4.2004, enabling the the petitioner/ College to continue M.D.S. (Oral Pathology) Course with an intake of five students from 1.6.2004, for which admissions shall be made from 1.5.2004 onwards; and
(iv) the third respondent/University shall, in consequence, pass appropriate orders in the matter of granting affiliation to the petitioner/College for five students in M.D.S.(Oral Pathology) course from 1.6 .2004.

This writ petition is ordered accordingly. No costs. Consequently, W.P.M.P.No.17308 of 2003 is closed.

Index : Yes
Internet : Yes

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To:

1. The Union of India
rep. by the Secretary to Government
Government of India
Ministry of Health & Family Welfare
Department of Health
PMS Section, Nirman Bhavan
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2. Dental Council of India
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